

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ALLAN KUEHNEMUND,
KUEHNEMUND POTATO FARMS,
and K AND T FARMS,

Plaintiffs,

v.

Case Number 08-14647-BC
Honorable Thomas L. Ludington

CROP PRODUCTION SERVICES, INC.,

Defendant.

**ORDER DENYING MOTION FOR RECONSIDERATION, DENYING MOTION TO
STRIKE AND FOR SANCTIONS, DENYING MOTION TO EXTEND AS MOOT, AND
DENYING WITHOUT PREJUDICE MOTION TO PROCEED IN FORMA PAUPERIS**

On November 3, 2008, Defendant Crop Production Services, Inc. removed Plaintiffs Allan Kuehnemund, Kuehnemund Potato Farms (“KPF”), and K and T Farms’ (“KTF”) complaint to this Court. The complaint alleges that Plaintiffs purchased diluted fertilizer and chemicals from Defendant Crop Production Services, Inc. (“Defendant”). On June 23, 2009, the Court adopted a report and recommendation to grant Defendant’s motion to dismiss Plaintiffs’ complaint with prejudice. Dkt. # 25. In that order, the Court rejected Plaintiffs’ arguments that the applicable statute of limitations period tolled pursuant to Mich. Comp. Laws § 600.5851(9) and that res judicata did not bar Plaintiffs’ additional claims. *Id.* at 3-4. The Court also enjoined Plaintiff from filing further complaints without the Court’s authorization. *Id.* at 5.

On July 24, 2009, Plaintiffs filed a motion for reconsideration and a notice of appeal. Dkt. # 26, 27. The Court will deny Plaintiffs’ motion for reconsideration for two reasons. First, the motion advances similar arguments contained in the pleadings associated with the motion to dismiss and report and recommendation. While E.D. Mich. LR. 7.1(g) permits a party to request

reconsideration of an order, “the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.” *Id.* 7.1(g)(3). A “palpable defect” is a defect which is obvious, clear, unmistakable, manifest, or plain. *Fleck v. Titan Tire Corp.*, 177 F. Supp. 2d 605, 624 (E.D. Mich. 2001). The motion for reconsideration continues to argue that Plaintiffs are entitled to equitable tolling and that res judicata does not apply in this case. The Court previously addressed each of those arguments. *See* dkt. # 25.

In addition, a motion for reconsideration must be filed within ten days after the entry of the order. E.D. Mich. LR. 7.1(g)(1). Even accounting for delays associated with service and filing sent via the U.S. Postal Service, Plaintiffs’ motion was at least a week late. For both these reasons, the Court will deny the motion for reconsideration.

Next, Defendant moved to strike the motion for reconsideration and for sanctions because Plaintiff’s motion is untimely. Dkt. # 29. In light of the denial of the motion for reconsideration, the request to strike is moot. With respect to sanctions, the Court will deny that motion because a response was not ordered by the Court. *See* E.D. Mich. LR 7.1(g)(2). Notwithstanding that proposition, the Court will monitor future pleadings in this matter to avoid unnecessary and frivolous motion practice.

Finally, Plaintiff Kuehnemund also filed a motion to proceed in forma pauperis on appeal. Dkt. # 28. In support, Plaintiff Kuehnemund contends that he has been permitted to proceed in forma pauperis with respect to his criminal proceeding. While that may be accurate, that does not

relieve Plaintiff Kuehnemund of demonstrating that he satisfies the criteria set forth in 28 U.S.C. § 1915(a). Thus, the Court will deny the motion without prejudice.

Accordingly, it is **ORDERED** Plaintiffs' motion for reconsideration [Dkt. # 26] is **DENIED**.

It is further ordered that Defendant's motion to strike and for sanctions [Dkt. # 29] is **DENIED**.

It is further **ORDERED** Plaintiffs' motion for an extension to file a reply brief and response to the motion to strike [Dkt. # 31] is **DENIED** as moot.

It is further **ORDERED** that Plaintiff Kuehnemund's motion for leave to proceed in forma pauperis [Dkt. # 28] is **DENIED WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 14, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 14, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS